IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

RSA.No. 965 of 2006()

AS.1/2001 of PRL.SUB COURT, KOZHIKODE
OS.217/1997 of PRL.M.C-I, KOZHIKODE

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APPELLANTS/ APPELLANTS/DEFENDANTS

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1. SHRI.VEDA VYASA TRUST,
   REG. NP. 154/83, 3/1418,
   VELLAYIL, KOZHIKODE TALUK.

2. K.AHALYA SANKAR,
   65 YEARS, D/O.LAKSHMANAN,
   MANAGING TRUSTEE, 'SHRI.VEDA VYASA TRUST',
   REG.NO.3/1418, KALATHINKUNNU AMSOM DESOM,
   KOZHIKODE TALUK.

3. NALUKUDYAPARAMBIL SHANMUGHAN,
   S/O.ICHIRAN, AGED 62 YEARS,
   TREASURER, SHRI VEDA VYASA TRUST, REG.NO.154/83,
   3/1418, VELLAYIL DESOM, KOZHIKODE TALUK,
   RESIDING AT NALUKUDIPARAMBIL, KALATHINKUNNU
   AMSOM DESOM, KOZHIKODE TALUK.

4. VALAPPIL BALAN, AGED 62 YEARS,
   S/O.VELAYUDHAN, TRUSTEE,
   SHRI.VEDA VYASA TRUST, 3/1418,
   VELLAYIL, KOZHIKODE, RESIDING AT VALAPPIL,
   KOYILANDY.

5. CHAYICHANTAKATH SREENIVASAN,
   AGED 52 YEARS, S/O.ACHUTHAN,
   TRUSTEE, SHRI.VEDA VYASA TRUST,
   3/1418, VELLAYIL, KOZHIKODE TALUK,
   RESIDING AT CHAYICHANTAKATH,
   NADUVATTUM AMSOM, MARAD DESOM, KOZHIKODE TALUK.

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SMT.C.G.PREETHA

RESPONDENTS/RESPONDENTS/PLAINTIFFS
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1. BALAGOPALAN A.K.,
AGED 77 YEARS, S/O.LATE CHANDU, 3/165,
PULICHAL LANE, KATCHERI AMSOM,
KURUMBRAKKATTU DESOM, KOZHIKODE TALUK.

2. KARTHIKEYAN, AGED 94 YEARS,
S/O.CHANDUKUTTY, KOLASSERY,
MANERIPADAM, PANNIYANKARA AMSOM DESOM,
KOZHIKODE TALUK.

R1 BY ADV. SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.128/07 IN RSA 965/06

DISMISSED

16/3/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO.965 OF 2006

Dated 16th March 2007

J U D G M E N T

Defendants in O.S.217/1997 on the file of Munsiff court, Kozhikode-I are appellants. Plaintiffs are respondents. Respondents instituted the suit seeking decree for declaration of title and recovery of possession of plaint schedule property which was leased out to the trust represented by appellants on 7/1/1991 with the object of providing shelter for land less fishermen. Case of respondents was that in spite of expiry of several years of Trust did not do anything to achieve the object and lease created on 7/1/1991 is in violation of the provisions of Section 74 of Kerala Land Reforms Act and therefore is invalid and respondents are entitled to the decree sought for. Appellants in the written statement contended that though property was obtained for constructing houses, land was found to be unsuitable for constructing houses and therefore houses could not be constructed on the sea side and a shed was constructed

which was entrusted to one Valsan and they spent Rs.14,000/- for construction of shed and in any case they are entitled to get value of improvements and suit is to be dismissed.

2. Learned Munsiff framed necessary issues. On the evidence, learned Munsiff found that lease was created in 1991 in violation of Section 74 of Kerala Land Reforms Act and therefore it is invalid. Relying on the decision of this court in **Muhammed v. Rakkiya (1994 (2) KLT 722)** it was held that when lease created is illegal and in violation of Section 74 of Kerala Land Reforms Act respondents are entitled to file a suit for declaration of title and recovery of possession and appellants have no right to continue in possession of the property and therefore granted a decree for declaration of title and recovery of possession. Appellants challenged the decree and judgment before Sub court, Kozhikode in A.S.1/01. Learned Sub Judge on re-appreciation of evidence confirmed the decree and judgment passed by learned Munsiff and dismissed the appeal. It is challenged in this second appeal.

3. Learned counsel appearing for appellants was heard. Argument of learned counsel appearing for appellants was that lease was created for charitable

purposes and therefore Section 74 of Kerala Land Reforms Act is not applicable and in any event appellants constructed a shed spending Rs.14,000/- and they are entitled to the value of improvements.

4. Learned Munsiff and learned Sub Judge rightly appreciated the case and found that the lease was in violation of Section 74 of Kerala Land Reforms Act. Courts below rightly found that as lease was in violation of Section 74 of Kerala Land Reforms Act, it is invalid and appellants cannot be claim any right under the lease. Plaintiffs are therefore entitled to recovery of possession of the property on the strength of their title.

4. Though it was contended that appellants have constructed a shed spending Rs.14,000/-, no evidence whatsoever, was adduced either to prove construction of shed or the expenses. None of the appellants were examined and no other evidence was adduced. In such circumstances, appellants are not entitled to claim value of improvements. There is no substantial question of law involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.